



POLICE DEPARTMENT

July 17, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Deshawn Ware
Tax Registry No. 937710
76 Detective Squad
Disciplinary Case No. 2014-11843

The above-named member of the Department appeared before me on April 20, 2015, charged with the following:

1. Said Detective Deshawn Ware, while on-duty and assigned to the Internal Affairs Bureau, on or about and between November 18, 2012 and July 1, 2013, made five (5) inquiries on a Department computer and through the Department's "IAPRO" system regarding a person known to the Department, and said inquiries did not relate to the official business of the Department. (*As amended*)

P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT COMPUTER SYSTEMS

The Department was represented by Samuel Yee, Esq. Respondent was represented by Michael Lacondi, Esq. Respondent, through his counsel, entered a plea of not guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

It is not disputed that Respondent and Police Officer [REDACTED] are close friends and that they speak to each other on almost a daily basis. On November 18, 2012, [REDACTED] was arrested while off duty in Atlantic City, New Jersey. The Internal Affairs Bureau's ("IAB") Command Center was notified about [REDACTED]'s arrest on November 18, 2012 at 0425 hours [Department Exhibit (DX) 1]. This notification was assigned IAB Log Number 12-60026 ("the [REDACTED] Log").

Respondent was on duty assigned to the IAB Command Center on November 18, 2012, and he performed a tour of duty of 0600 hours to 1433 hours. When he entered the IAB Command Center at 0600 hours to start his tour, he saw paperwork regarding the [REDACTED] Log and a photo of [REDACTED] on top of a desk. Respondent entered his personal IAB access code into an IAB computer to open the [REDACTED] Log, and thereby obtain access to the information contained in the Log, at 0605 hours, 0757 hours, 0759 hours, 0810 hours, 0812 hours, and 0816 hours on November 18, 2012 (DX 3). Respondent also used his personal IAB access code to open the [REDACTED] Log and obtain access to the information contained in the Log once on July 1, 2013 (DX 3).

The Assistant Department Advocate called Detective Steven Suspenski as a witness. Suspenski, who is assigned to IAB, testified that when Respondent was transferred to IAB in 2011, he signed a confidentiality agreement in which he acknowledged that he was not permitted to make unofficial inquiries into the IAB database which were not related to official Department business (DX 4).

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Suspenski further testified that because Respondent was assigned to the IAB Command Center his duties consisted of receiving complaints and updating active IAB Logs. Suspenski asserted that because Respondent was not assigned to an IAB investigative command, he carried no investigative case load and he performed no investigative duties. Thus, the only valid reason Respondent would have to access any IAB Log Number would be because he had been informed of a new development in the investigation which needed to be entered into the Log to update the information contained in the Log.

Suspenski testified that because the [REDACTED] Log shows that when Respondent opened the Log at 0605 hours, 0757 hours, 0759 hours, 0810 hours, and 0816 hours on November 18, 2012, he entered no new information into the Log. Respondent's acts of accessing the information contained in the Log constituted unofficial inquiries into the IAB database which were not related to official IAB business. However, Suspenski testified that when Respondent accessed the [REDACTED] Log at 0812 hours on November 18, 2012, he entered an update into the Log (to document that he had received a call from "P.O. St. Clair" who reported that [REDACTED] had been suspended from duty as the result of his arrest (DX 1 p. 2). Because Respondent had entered an update into the Log when he accessed the Log at 0812 hours, this instance of accessing the Log did constitute an inquiry which was related to official IAB business.

Suspenski further testified that because the [REDACTED] Log shows that when Respondent opened the Log on July 1, 2013 he could not have entered any new information into this Log because the Log had been closed, this act of accessing the Log constituted an unofficial inquiry which was not related to IAB business.

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On cross-examination, Suspenski was confronted with the fact that the [REDACTED] Log record (DX 3) indicates that a number of other MOS assigned to LAB had accessed the Log on November 18, 2012, and that Police Officer Arango had accessed the Log at 0552 hours even though the last update that Arango entered into the Log was at 0500 hours. When Suspenski was asked whether these other MOS had accessed the Log pursuant to official Department inquiries, he answered that he did not know whether these other inquiries were official inquiries because his investigation was limited to ascertaining whether the inquiries that were made by Respondent were official inquiries.

Respondent was subjected to a tape-recorded official Department interview on March 21, 2014 (DX 5). The answers Respondent gave to the questions that were posed to him at this interview are discussed below in the Findings and Analysis section.

At this trial, Respondent asserted that he had accessed the [REDACTED] Log at 0605 hours, and the three other occasions prior to 0812 hours, to get working on the Log and to get acclimated with the information contained in the Log because the Log had been passed to him by Officer Arango when Arango went end of tour at 0630 hours.

FINDINGS AND ANALYSIS

It is charged that on November 18, 2012 and on July 1, 2013, Respondent made inquiries on a Department computer and through the Department's "IAPRO" system regarding the [REDACTED] Log that did not relate to the official business of the Department.

The charge cites to Patrol Guide Procedure No. 219-14 which places members of the service on notice that it is improper to make inquiries into Department computer systems that are not related to the official business of the Department. Moreover, Respondent was on clear notice that he was not permitted to make unofficial inquiries into the "IAPRO" system because when Respondent was transferred to IAB in 2011 he signed a confidentiality agreement that he would not make unofficial inquiries into any IAB databases (DX 4).

The Assistant Department Advocate (the Advocate) agreed that Respondent's act of accessing the [REDACTED] Log at 0812 hours on November 18, 2012 was proper because Respondent had been informed that [REDACTED] had been suspended and the Log needed to be updated to include this new information. However, the Advocate asserted that Respondent's other acts of accessing the [REDACTED] Log on November 18, 2012 (DX 3) were improper because Respondent had no official reason to access the Log on those occasions or on July 1, 2013.

At this trial, Respondent asserted that he had accessed the [REDACTED] Log at 0605 hours on November 18, 2012, and on other occasions that day, to get working on the Log and to get acclimated with the information contained in the Log because he had allegedly inherited the Log from Officer Arango. However, at his official Department interview, when Respondent was asked why he had opened and looked at the [REDACTED] Log beginning at 0605 hours, he answered that when he walked into the IAB Command Center at 0600 hours to start his tour he saw a print-out of the Log and a photo of [REDACTED] on a desk and "I go, oh shit, that's [REDACTED]...when you are on a desk, either you got DUI (Driving Under the Influence), uh, shooting. So my first, maybe he got

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involved in a shooting. I haven't heard from him. I don't know. I go look. I look it up on the computer. And that's what it was. He got arrested in New Jersey." (DX 5 p. 12-14) I can only conclude from this answer that Respondent's curiosity got the best of him and that he opened and looked at the [REDACTED] Log only five minutes after the start of his tour because he was concerned about his friend and was interested to know what had happened to him.

This finding is supported by the fact that when Respondent was asked why he had opened and looked at the [REDACTED] Log on July 1, 2013, he answered, "I don't recall to be honest with you." (DX 5 p. 15) Respondent's unexplained action as to why he opened the [REDACTED] Log on July 1, 2013, is highly significant in light of Suspenski's unrefuted testimony that Respondent could not have been updating the Log with new information on July 1, 2013, because the Log had already been closed.

Finally, although Respondent's counsel argued that Respondent was being singled out for punishment because the [REDACTED] Log record (DX 3) indicates that Officer Arango and other MOS assigned to IAB had accessed and read, but not updated, the Log on November 18, 2012, Respondent offered no proof that any of these inquiries were improper and even if other MOS did improperly access the Log, this does not excuse Respondent's actions of doing so.

Since the Advocate proved that Respondent's actions of accessing the Log on multiple occasions on November 18, 2012 (with the exception of the inquiry he made at 0812 hours), and on a single occasion on July 1, 2013, constituted unofficial inquiries which were not related to IAB business, Respondent is found guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no prior formal disciplinary record.

The Advocate recommended that Respondent forfeit 15 vacation days as a penalty. The Advocate did not cite any previous disciplinary cases to support this penalty recommendation.

A review of previous disciplinary decisions shows that penalties of the loss of 15 or more vacation days have generally been imposed only where the misconduct of making improper inquiries in Department computer systems is accompanied by other misconduct. For example, in *Disciplinary Case No. 2013-9726* (Aug. 26, 2014), a nine-year police officer who had no prior disciplinary record received a penalty of the forfeiture of 15 vacation days for utilizing a Department computer to access Department records that were unrelated to his assignment, using his partner's computer password without permission, using his personal cell phone for non-Department purposes while conducting a vehicle stop, and providing misleading answers at his official Department interview.

Respondent's misconduct here more closely resembles cases where penalties of the forfeiture of five to ten vacation days have been imposed. For example, in *Disciplinary Case No. 2013-10610* (Sept. 8, 2014), a four-year police officer with no prior disciplinary record forfeited a penalty of five vacation days for wrongfully utilizing

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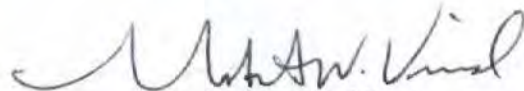
another officer's confidential access code to make unofficial inquiries on six occasions and official inquiries on 14 occasions.

Also, in *Disciplinary Case No. 2013-9678* (Nov. 6, 2014), a three-year police officer with no prior disciplinary record forfeited ten vacation days for utilizing a Department computer to access Department records which were not related to the officer's assignment. Also, in *Disciplinary Case No. 2012-6920* (Dec. 12, 2014), a 25-year detective with no prior disciplinary history forfeited a penalty of ten vacation days for asking another MOS to perform an unauthorized inquiry using Department computers, releasing the results of that inquiry to a third party, and for raising her voice to a supervisor while standing only inches from said supervisor.

Finally, in *Disciplinary Case No. 2014-11865* (May 28, 2015), a seven-year sergeant with no prior disciplinary record received a penalty of ten vacation days for using Department computers to conduct an inquiry in the OMNI system for non-Department purposes on two occasions and failing to notify IAB after he became aware that he was the subject of a criminal complaint.

Therefore, it is recommended that Respondent forfeit ten vacation days.


Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner – Trials

APPROVED

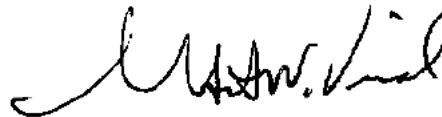
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WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE DESHAWN WARE
TAX REGISTRY NO. 937710
DISCIPLINARY CASE NO. 2014-11843

Respondent received an overall rating of 3.5 on his 2013-2014 annual performance evaluation and 4.0 on his two previous evaluations. He has been awarded one Meritorious Police Duty medal and two Excellent Police Duty medals. [REDACTED]
He has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials